



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,051	08/25/2003	Corrado Di Cecco	P08032US00/MP	1570
881	7590	09/27/2006	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			THALER, MICHAEL H	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



Art Unit: 3731

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, drawn to an ear duct cleaning device, classified in class 606, subclass 162.
- II. Claim 20, drawn to a method for using an ear duct cleaning device, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process. For example, it could be used to clean a nasal cavity instead of an ear duct.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of

Art Unit: 3731

their different classification, restriction for examination purposes as indicated is proper.

In addition, this application contains claims directed to the following patentably distinct species:

The species of figures 1-7; and

The species of figure 8.

The species are independent or distinct because they differ sufficiently in structure as to make them patentably distinct.

Applicant is also required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims

Art Unit: 3731

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

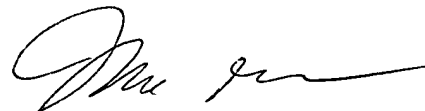
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael

Art Unit: 3731

Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

mht  
9/18/06



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731